

REMARKS

Claims 1-7, 9-29, 133-138, 140-144, 146-207 are pending in this application, of which claims 13, 26, 27, 133, 134, 144, 147, 149, 160, 161, 170, 171, 183, 184, 192, 193, 196 and 202 are being amended, and claim 145 is being cancelled.

Claim 13 is being amended to remove the word "stable" from the preamble to cosmetically improve the claim language. Claims 133 and 134 are being amended to recite perforated microstructures. Claims 147 is being amended to correct the spelling of microspheres. Claims 160 and 183 are being amended to correct the spelling of phospholipid. Claims 13, 144, 161, 184, 196, and 202 are being amended to correct the spelling of distearoylphosphatidylcholine. These proposed amendments only make express, recitations of features that were already inherent in the original claim; and thus, are not a narrowing of the scope of the properly construed claims. TurboCare v. General Electric Co., 264 F.3d 1111 (Fed. Cir. 2001); Bose Corp. v. JBL, Inc., 274 F.3d 1354 (Fed. Cir. 2001); and Interactive Pictures Corp. v. Infinite Pictures, Inc., 274 F.3d 1371 (Fed. Cir. 2001).

Claims 26, 170 and 192 are being amended to recite "... the density differential between the density of the suspended perforated microparticles permeated with the suspension medium and the density of the suspension medium is less than about 0.6 g/cm³". This claim language is supported by the Specification which teaches:

Accordingly, in preferred embodiments of the present invention, the virtual particles and the suspension medium will have a density differential of less than about 0.6 g/cm³.

Specification, page 16, lines 2-4.

Claims 27, 149, 171, 193 and 202 are being amended to further recited vaccines and antiinfectives, which is supported by the Specification at page 27, lines 15 and 26, respectively.

The claim amendments are fully supported by the originally filed Specification and claims and add no new matter. Thus, entry of the amendments is respectfully requested.

The Specification is being amended to correct the spelling of the word distearoylphosphatidylcholine. Also "behenoylphosphatidylcholine, arachidoylphosphatidylcholine" is being added to the Specification, and this language is supported by original claim 13 in the application as filed, and original claim 7 in priority document PCT WO 99/16422 (US98/20615) of which the present application is a continuation application.

Claim 145 is being cancelled as duplicative.

Drawings

As requested by the Examiner, Applicant will submit a better version of the photographs of the drawings as soon as these are available. These drawings will be separately mailed to the Patent Office.

Rejection Under 35 U.S.C. 112

The Office Action maintained the rejection of claims 1-7 and 9-29 under 35 USC 112, second paragraph.

Applicant had previously deleted the word "substantially" which was objected to by the Examiner in claim 1.

Applicant withdraws the previous arguments in view of the Examiner's comments, and respectfully submits that the remaining language in claim 1 "...wherein said suspension medium comprises at least one propellant and permeates said perforated microstructures" is now definite under Section 112.

This language is definite because by claiming that the suspension medium permeates the perforated microstructures, Applicant means that the suspension medium flows into the pores, voids, perforations, holes, defects or other interstitial spaces of the perforated microstructures. As stated in the Specification, "... the perforated microstructures preferably comprise pores, voids, hollows, defects or other interstitial spaces that allow the fluid suspension medium to freely permeate or perfuse the particulate boundary." (Emphasis added, page 11, lines 19-21.) Thus, the perforated microstructures have a particulate boundary, namely the external surface of the microstructure, at which pores, voids, hollows, defects or other interstitial spaces of the microstructure terminate in openings. The suspension medium permeates, that is flows into, these openings. Thus, it is clear and definite that what is being claimed is a perforated microstructure having perforations into which flow a suspension medium.

Further, the dictionary definition of the word "permeate" also supports and is congruent with Applicant's construction and meaning of this word. The word "permeate" is defined to mean "to diffuse through or penetrate something" or "to pass through the pores or interstices of", See, e.g., Merriam-Webster's Medical Dictionary, Merriam-Webster Inc., 2002. Thus, the word "permeate" is being correctly used to mean penetration of the suspension medium into the openings of the perforations of the perforated microstructure. There is no ambiguity in claim language to permeation of a suspension medium into an opening of a perforated microstructure, thus, this claim language is definite under section 112.

The Examiner also commented on claim 148 which was previously rejected. However, claim 148 states that the "the mean geometric diameter of the microparticles is between 1 and 5 μm ." Claim 148 does not contain the words "permeates" or "substantially".

However, claims 133, 151, 174, 196 and 202, also contain language to a suspension medium comprising at least one propellant which permeates perforated microstructures. If the Examiner meant to refer to one of these claims instead of claim

148, Applicant respectfully submits that these claims are also definite under Section 112 for the same reasons as claim 1.

The Examiner further objected to claims 26, 170 and 192, on grounds of these words also contain the terms “substantially” and “permeated” in the claim language “...wherein the density of the suspended perforated microparticles permeated with the suspension medium substantially matches that of the suspension medium.”

While disagreeing with the Examiner’s rejection, Applicant is amending claims 26, 170 and 192, to recite that “...the density differential between the density of the suspended perforated microstructures permeated with the suspension medium and the density of the suspension medium is less than about 0.6 g/cm³”. Applicant respectfully submits that this amendment obviates the present rejection.

Double Patenting Rejections

1. The Examiner rejected claims 1-7, 9-29, 133-138 and 140-150 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-7 and 9-29 and 72-87 of U.S. Patent No. 6,309,623. The Examiner further added claims 151-159, 161, 166-169, and 171-173 to this rejection.

Applicant is providing a Terminal Disclaimer over U.S. Patent No. 6,309,623 to overcome this rejection.

2. The Examiner further rejected claims 1, 133-134, 136, 138, 143, 144 and 147-150 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 3, 5-6, 8-11, 13, 14, and 16 of U.S. Patent No. 6,630,169. The Examiner further added claims 151-159, 161, 166-169, and 171-173 to this rejection.

Applicant is providing a Terminal Disclaimer over U.S. Patent No. 6,630,169 to overcome this rejection.

3. The Examiner further rejected claims 1-7, 9-29, 133-138, 140-164, 166-196, 199-202, and 205-207 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 and 3-20 of U.S. Patent No. 6,638,495.


Applicant is providing a Terminal Disclaimer over U.S. Patent No. 6,638,495 to overcome this rejection.

4. With regard to the provisional obviousness-type double patenting rejections over copending applications 11/317,523 and 11/317,839, should these applications issue prior to issuance of the present application, Applicant will provide Terminal Disclaimer(s) over these applications if the same is requested by the Examiner.

CONCLUSION

The above-discussed amendments and remarks are believed to place the present application in condition for allowance. Should the Examiner have any questions regarding the above remarks, the Examiner is requested to telephone Applicant's representative at the number listed below.

Respectfully submitted,
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